

APPEAL NO. 020629
FILED APRIL 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 20, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of injury of _____; that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed, without good cause, to timely notify his employer of his claimed injury under Section 409.001; and that the claimant has not had disability. The claimant appealed and the carrier responded.

DECISION

The hearing officer's decision is affirmed.

The carrier is incorrect in asserting that the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission). Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Pursuant to Section 410.202(d), for appeals filed on or after June 17, 2001, Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for appeal under subsection (a) or a response under subsection (b) must be filed. According to Commission records, the hearing officer's decision was mailed to the claimant on February 26, 2002, and under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant is deemed to have received the hearing officer's decision on March 3, 2002. Under Section 410.202(d), the 15th day after the date of receipt was March 25, 2002. The claimant's appeal was timely filed with the Commission on March 19, 2002.

The claimant claimed a repetitive trauma injury from lifting and stacking bags of sand at work. Section 401.011(36) defines a "repetitive trauma injury" as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." The claimant had the burden to prove that he sustained a repetitive trauma injury during the course and scope of his employment. Davis v. Employers Insurance of Wausau, 694 S.W.2d 105 (Tex. Civ. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). The claimant also had the burden to prove that he gave timely notice of injury to his employer under Section 409.001(a) or had good cause for failing to timely report the injury. Conflicting evidence was presented at the CCH on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations that

the claimant did not sustain a compensable repetitive trauma injury with a date of injury of _____, and that the claimant failed, without good cause, to timely notify his employer of his alleged injury are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JIM ADAMS, ATTORNEY
450 GEARS ROAD, SUITE 500
HOUSTON, TEXAS 77067.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge